

## REMARKS

The following addresses the points raised in the office action mailed 9 March 2005. Following entry of this amendment, claims 1, 17, 27 and 32 are pending.

### The Specification

The disclosure has been objected to for lacking a brief description of Figure 7. Reconsideration is respectfully requested. A brief description of Figure 7 was included in the disclosure as originally filed at the bottom of page 35, although the paragraph is missing its proper indentation.

### Claim Objections

Claim 1 was objected to because of the labeling of each step. As shown in the amendment to claim 1 above "a." has been changed to – a) – as suggested by the Examiner.

### 35 U.S.C. 102

Claims 1, 27, 32, 37, and 67 were rejected under 35 U.S.C. 102 as being anticipated by Gallardo, et al. (Planta, 197, 324-332, 1995).

Claims 37 and 67 have been canceled; the following comments apply only to claims 1, 27 and 32.

Gallardo teaches a gene comprising malate dehydrogenase cDNA sequences under the control of a 35S promoter. With entry of this amendment, Claim 1 has been limited to the citrate synthase enzyme. With the removal of malate dehydrogenase

from claim 1, the cited reference fails to disclose an element of amended claim 1, and as such, can not anticipate claim 1. Reconsideration is respectfully requested.

Reconsideration is also requested of claims 27 and 32. These claims are dependent on claim 1, and for the reasons noted above, can not be anticipated by the cited reference.

35 U.S.C. 103

Claim 17 has been rejected under 35 U.S.C. 103 as being unpatentable over Gallardo, described above, in view of U.S. Patent 5,015,580 (Christou, et al.). Reconsideration is respectfully requested.

As noted above, Girrardo fails to teach an element of claim 1, namely the enzyme for citrate synthase. Christou fails to provide any teaching relating citrate synthase, and therefore provides no reasonable motivation to combine the two references. Lacking such motivation to combine, the references do not support a *prima facie* basis for rejecting claim 17, dependent on amended claim 1.

Double Patenting

Claim 37 has been objected to as being a duplicate of claim 32.

Claim 37 has now been cancelled in order to address this objection.

Amendments to claim 1

The opening words of each step of claim 1 have been amended to use an active verb in keeping with more a more traditional method language style. Also, with the election of the 35S promoter as a species, this language (actually from claim 67) has been added to claim 1. Claim 67 is now redundant and has been cancelled.

It is therefore respectfully requested that claims 1, 17, 27, and 32 are now in

condition for allowance. All of the objections and rejections in the Office Action have been addressed. Early allowance of the claims is respectfully solicited.

The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment to Deposit Account No. 02-4650. A duplicate copy of this form is enclosed.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney at 410-923-2660.

Respectfully submitted,

9 September 2005



William J. Bundren  
PTO Reg. No. 31,712

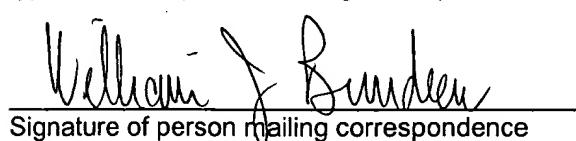
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